

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 86596-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

Issued and entered
this 20th day of November 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On August 20, 2008, XXXXX, on behalf of his minor daughter XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on August 27, 2008.

The Petitioner is enrolled for health care benefits through the Michigan Education Special Services Association (MESSA) as an eligible dependent of her step-mother. The coverage is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on September 8, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the MESSA *Choices II Group Insurance for School Employee Coverage Booklet* (the booklet). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter

does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner, born May 18, 1992, was diagnosed with progressive mitochondrial enzyme deficiency. She also has neurological disorders, learning disabilities, right side hemiparesis, and limited mobility. She is permanently disabled.

The Petitioner's father requested modifications and construction changes to his home to accommodate the Petitioner's disability. BCBSM approved some modifications but denied others under the Medical Case Management (MCM) program which provides benefits, including home modifications, depending on the special circumstances of the patients with catastrophic illnesses and injuries.

The Petitioner appealed BCBSM's decision to deny the requested modifications to her father's home. BCBSM held a managerial-level conference on July 2, 2008, and issued a final adverse determination dated July 22, 2008.

III ISSUE

Is BCBSM required to pay for the requested modifications to the Petitioner's father's home?

IV ANALYSIS

Petitioner's Argument

In 2006, the Petitioner's father started planning for construction of a home, in part to meet the Petitioner's special needs. He consulted a builder and other contractors who specialize in homes for the disabled and also contacted MESSA and a MCM case was opened. He says no construction plan modifications were done until he consulted with and received recommendations from MESSA-provided case managers and the construction company MESSA recommended. However, while BCBSM covered some of the features in the new home, it denied others – it has refused to reimburse the Petitioner's family for the costs incurred to make the new home accessible

for the Petitioner.

The largest item denied was an elevator to allow the Petitioner to access a therapy room in the basement from the main floor. The Petitioner has been receiving physical therapy (PT) and occupational therapy (OT) for fifteen of her sixteen years and her family has been told that she would benefit from home-based therapy because the “start-stop” process of PT and OT employed by insurance carriers has an adverse effect on her overall health and well being. The Petitioner wants BCBSM to cover the cost of the elevator and related expenses.

The Petitioner believes that all of the recommended construction modifications were necessary for her care. She wants BCBSM to reimburse for all of the necessary modifications.

BCBSM's Argument

Section 8 of the booklet, *Other Covered Health Care Services* describes Medical Case Management as:

This is a benefit designed to assist you if you are diagnosed with a catastrophic illness or injury. It is tailored to meet your unique medical needs. Approval of benefits will be based on an objective review of your medical status, current treatment plan, projected treatment plan, long-term cost implications and the effectiveness of care.

Eligibility for MCM benefits and termination of such benefits is made on a case-by-case basis in accordance with medically necessary criteria.

Medical Case Management is designed to give you and your family members flexibility and direct involvement in the management of your health care.

Note: Prior approval must be obtained from MESSA before benefits can begin.

In this case, since the Petitioner is permanently disabled, MESSA MCM approved home modifications for the new construction but they were limited to widening of the Petitioner's bathroom and bedroom doors, appropriate modifications to the bathroom to allow for proper and safe hygiene processes, and two handicap accessible exists for the home. These home modifications were approved by MESSA after the initial home evaluation and reviewed by the occupational therapist.

BCBSM says it did not approve additional modifications and construction charges in the Petitioner's father's home in the total amount of \$39,653.00. The largest request dealt with the elevator from the main floor to the basement (\$22,850.00), power door operators for the elevator (\$8,160.00), and a backup power system for the elevator (\$3,000.00). These expenses (\$34,010.00 of the \$39,653.00) were denied because BCBSM determined they were not medically necessary and therefore not a covered benefit.

BCBSM points out that it covered modification to two houses (the Petitioner's parents are divorced and have joint legal and physical custody of the Petitioner). The Petitioner's mother's home was modified at a cost of \$11,045.00 and the Petitioner's father's home was modified at a cost of \$17,720.00.

BCBSM argues that it has paid for a total of \$28,765.00 in modifications in the homes of the Petitioner's mother and father. It believes it is not required to pay for the other modifications including the elevator in her father's home since they are not medically necessary.

Commissioner's Review

The MCM benefit appears in the section of the booklet that describes coverage for other health care services in addition to facility and physician services. The MCM services may be needed because of the unique medical needs of covered individuals with catastrophic illnesses or injuries. The extent of the MCM benefit is not defined in the certificate and the Commissioner was not provided with any supplementary materials that outlined its scope.

The Commissioner notes that the booklet says that benefits under MCM are determined "on a case-by-case basis in accordance with medically necessary criteria." However, medical necessity alone cannot be the basis for requiring coverage of a benefit that is not covered under the booklet's terms. There is no mention of home modification in the description of the MCM benefit (or elsewhere in the booklet) but apparently, as was the case here, BCBSM will cover the cost of home modification under certain circumstances. The booklet also contains this provision in *Section 10*:

Exclusions and Limitations (page 48):

The following exclusions and limitations apply to the MESSA Choices II program. These are in addition to limitations appearing elsewhere in this coverage booklet:

* * *

- Items for the personal comfort or convenience of the patient

Furthermore, the MCM benefit is not mandated by state law. Considering the foregoing, the Commissioner must allow BCBSM discretion in its interpretation of the benefits available under the MCM benefit. BCBSM has explained in the final adverse determination that home modification is limited to safety and accessibility needs that are not for personal comfort and convenience.

Following the managerial-level conference on July 2, 2008, BCBSM informed the Petitioner of its decision on MCM benefits in its July 22, 2008, final adverse determination:

We cannot approve benefits for the modifications and construction charges previously denied under the MESSA Case Management Program. The toilet paper dispenser (\$50.00), lowered towel rod (\$50.00), lowered mirror (\$92.00), lowered closet rod, cabinets and installation (\$1,560.00), vanity top and sink and installation (\$496.00), the elevator between the main floor and the basement (\$22,850.00), the power door operators for the elevator (\$8,160.00), the back-up power system for the elevator (\$3,000.00), smoke detectors (\$525.00), fire extinguishers (\$150.00), and Pergo laminate floor and installation in [the Petitioner's] bedroom (\$2,720.00) are not included in the home modifications covered by your MESSA contract. As a result, we are precluded from allowing benefits, and you would remain responsible for the charges.

The final adverse determination went on to say:

House modifications are done to promote safety in the home environment for a person who is permanently disabled. With respect to MESSA MCM approval, covered home modifications are limited to widening of [the Petitioner's] bathroom and bedroom doors, appropriate modifications to the bathroom to allow for proper and safe hygiene processes, and two handicap accessible entrances/exits to the home.

The toilet paper dispenser, lowered towel rod, lowered mirror, lowered closet rod, cabinets and installation, vanity top and sink and installation, the elevator between the main floor and the basement, the power door operators for the elevator, the back-up power system for the elevator, smoke detectors, fire extinguishers, and Pergo laminate floor and installation in [the Petitioner's] bedroom do not meet this criteria. Therefore, we cannot

authorize payment.

[T]he MESSA MCM previously approved for your home a raised toilet with grab bars on each side, two grab bars in the shower, a shower bench, a handheld shower hose with a slide bar, a water temperature regulator, a pull-under sink, lever handles on faucets and doors, wrap-on under-sink piping, electrical outlets next to the sink, ceramic tile for the bathroom floor, roll-in shower, and walls, an overhead lift system, and a 5' by 5' deck for turning in the entrance/exit at the back of your home. In addition, MESSA MCM approved modifications for [the Petitioner's] mother's home that include replacement sliding glass doors, a deck extension outside the glass window beyond the garage door, an EZ access portable ramp, and a ceiling track lift system. These items meet the criteria for covered home modifications under the MESSA MCM.

The Commissioner concludes that the modifications that were approved by BCBSM were done to promote safety or accessibility to the homes. The Commissioner further concludes that the home modifications that were denied could reasonably be categorized as items for the personal comfort or convenience of the Petitioner or not related to safety and accessibility.

Therefore, the Commissioner concludes that BCBSM acted within the scope of its coverage when it denied certain home modifications for the Petitioner under the MCM program.

V ORDER

BCBSM's final adverse determination of July 22, 2008, is upheld. BCBSM is not required to cover the modifications to her father's home that were denied under MCM.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.